



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

NOV 16 2010

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5939 4182**

Scott Glezen  
Glezen Farms, LLC  
1024 Caldwell Hill Road  
Lisle, NY 13797

Re: Matter of Glezen Farms, LLC  
**Administrative Order CWA-02-2011-3004**

Dear Mr. Glezen:

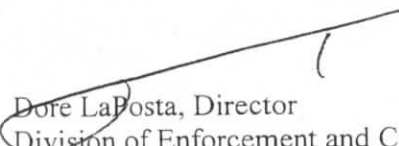
During an inspection of the above named facility on June 9, 2010, the United States Environmental Protection Agency ("EPA") discovered several violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §1251 et seq. Specifically, EPA found that you were violating several provisions of your State Pollutant Discharge Elimination System ("SPDES") Permit for Concentrated Animal Feeding Operations ("CAFOs"), number GP-04-02. Enclosed are two (2) originals of this Order, issued pursuant to Sections 308(a) and 309(a)(3) of the Act, which details the findings of violations and describes the steps you must take to come into compliance with the Act.

Also enclosed is the Compliance Evaluation Inspection ("CEI") report for the CEI conducted by EPA at the above mentioned facility on June 9, 2010.

Please acknowledge receipt of this Order on one of the originals and return it by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject the facility to civil and/or criminal penalties pursuant to Section 309 of the Act. Compliance with the terms of this Order shall not preclude EPA from initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. §1319.

For your information, I am enclosing an Information Sheet which may be helpful in obtaining compliance assistance if you are a small business as defined at 13 C.F.R. §121.201, or if you wish to comment on this action to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Fairness Board. Should you have any questions concerning this matter, please feel free to contact Douglas McKenna, Water Compliance Branch Chief at (212) 637-4244 or Christy Arvizu of the Water Compliance Branch at (212) 637-3961.

Sincerely,

  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

1. Order
2. Inspection Report
3. Information for Small Business

cc: Joseph DiMura, P.E., Director, Bureau of Water Compliance Programs, NYSDEC  
Joseph Zalewski, Regional Water Engineer, NYSDEC Region 7

bcc: Douglas McKenna, DECA-WCB  
Christy Arvizu, DECA-WCB w/enclosure  
Justine Modigliani, DECA-WCB-NPDES w/enclosure  
Patrick Harvey, DECA-CAPS w/enclosure  
Christopher Saporita, ORC

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**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

Scott Glezen  
Glezen Farms, LLC  
Lisle, NY 13797

NYA000237

Proceeding pursuant to Sections 308(a) and  
309(a)(3) of the Clean Water Act, 33 U.S.C.  
§§1318(a) and 1319(a)(3)

**ADMINISTRATIVE  
COMPLIANCE ORDER**

CWA-02-2011-3004

The following Findings of Violation are made, and Order for Compliance ("Order") issued, pursuant to Sections 308(a) and 309(a)(3) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§1318(a) and 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2, and since further redelegated to the Director, Division of Enforcement and Compliance Assistance, Region 2, EPA.

**A. Legal Authority**

1. Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a), prohibits the discharge of pollutants from a point source into waters of the United States, except in compliance with, *inter alia*, Section 402 of the Act, 33 U.S.C. §1342.
2. Section 402 of the CWA, 33 U.S.C. §1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.
3. The Administrator of EPA has promulgated regulation 40 C.F.R. §122.23(a), which requires operators to obtain a NPDES permit for discharges or potential discharges associated with Concentrated Animal Feeding Operations ("CAFOs"). The regulations at 40 C.F.R. §122.23 establish requirements for discharges associated with Concentrated Animal Feeding Operations, including all animals or the production of those animals, regardless of the type of animal.
4. Section 402 of the CWA, 33 U.S.C. §1342, authorizes the Administrator of the EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the Act and conditions which the Administrator determines are necessary. Additionally, under the authority delegated to the New York State Department of Environmental Conservation ("NYSDEC") by the EPA under

Section 402(b) of the Act, 33 U.S.C. §1342(b), a State Pollutant Discharge Elimination System (“SPDES”) permit is required to be issued to facilities in New York State by the NYSDEC for the discharge of pollutants from said facilities from a point source to any waters of the United States.

5. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. §1362(6) to include, *inter alia*, biological materials and agricultural waste discharged to water.
6. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. §1362(14) to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, [or] concentrated animal feeding operation ... from which pollutants are or may be discharged.”
7. “Waters of the United States” are defined in 40 C.F.R. §122.2 to include, *inter alia*, intrastate rivers and streams, and tributaries thereto.
8. “Process wastewater” is defined by 40 C.F.R. §122.23(b)(7) as water directly or indirectly used in the operation of an animal feeding operation (“AFO”) for any or all of the following: spillage or overflow from animal or poultry watering systems; washing or cleaning or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes in contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.
9. An “animal feeding operation” or “AFO” is defined by 40 C.F.R. §122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
10. A “concentrated animal feeding operation” or “CAFO” is defined by 40 C.F.R. §122.23(b)(2) as an AFO that is, *inter alia*, a medium CAFO.
11. A “medium CAFO” is defined by 40 C.F.R. §122.23(b)(6)(i)(A) as an animal feeding operation that stables or confines 200-699 mature dairy cows, whether milked or dry.
12. “GIS” or “Geographic Information Systems” is defined as a computer system capable of capturing, storing, analyzing, and displaying geographically referenced information; that is, data identified according to location.

## **B. Factual Background**

1. Scott Glezen, doing business as Glezen Farms, LLC (“Respondent”), owns and operates an animal feeding operation located at 1024 Caldwell Hill Road in Lisle, New York (the “Facility”).

2. Respondent obtained coverage under the NYSDEC SPDES General Permit for Concentrated Animal Feeding Operations, GP-04-02 ("CAFO General Permit" or "Permit"), effective December 25, 1999.
3. The Facility confines and feeds or maintains dairy cows for a total of forty-five (45) days or more in any twelve-month period, and neither crops, vegetation, forage growth, nor post harvest residues are sustained in the normal growing season over any portion of the Facility. Therefore, the Facility is an AFO as defined by 40 C.F.R. §122.23(b)(1), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. §1362(14).
4. Inspectors from EPA inspected the Facility on June 9, 2010.
5. At the time of the June 9, 2010 inspection, the Facility was confining 690 mature dairy cows, 536 heifers and 40 calves on-site. Therefore, the Facility is a medium CAFO as that term is defined in 40 C.F.R. §122.23(b)(6)(i)(A).

### **C. Findings of Violation**

As described in greater detail in the enclosed CEI report, at the inspection on June 9, 2010, EPA inspectors observed the following violations of the Respondent's SPDES permit:

1. Section VII.C.iv of the NYSDEC CAFO General Permit requires medium CAFOs to develop a Comprehensive Nutrient Management Plan ("CNMP") that includes, and fully implements, responses to high risk conditions, no later than October 1, 2008. During the inspection, EPA inspectors observed that the Facility's silage leachate controls, including silage leachate collection and separation and a high flow grass treatment strip, had not been fully implemented. In addition, during the inspection, EPA inspectors observed that barnyard runoff management, specifically the control of roof water via roof gutters, had not been fully implemented. As identified in the Respondent's Annual Compliance Reports from 2008 and 2009, silage leachate controls and barnyard runoff management are considered to be responses to high risk conditions. Therefore, the Respondent failed to fully implement CNMP responses to high risk conditions, in violation of Section VII.C.iv of the CAFO General Permit.
2. Section VII.A of the NYSDEC CAFO General Permit states CNMPs are required to be prepared in accordance with "NRCS Conservation Practice Standard No. NY312." Specifically, NY312 states that clean water shall be excluded from concentrated waste areas to the fullest extent practical. At the time of the inspection, EPA inspectors observed that clean water was not excluded from concentrated waste areas to the fullest extent practical due to a lack of roof gutters or clean water diversions at three (3) barns so stormwater comes into contact with exposed bedding, feed and manure and then flowed into a roadside ditch. Therefore, the Respondent failed to exclude clean water from concentrated waste areas to the fullest extent practical, in violation of Section VII.A of the CAFO General Permit.
3. Section X.M of the NYSDEC CAFO General Permit requires that permittees obtain other permits as required by state, local, or federal law. At the time of the inspection, EPA



inspectors observed that the New Barn site at the Main Farm on Caldwell Hill Road was not stabilized, which allowed stormwater to come into contact with loose sediment and flow off the site. Based on GIS, it appears that at least 1.6 acres of earth was disturbed during construction of the New Barn and as such, coverage under the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity would have been required prior to starting the project. NYSDEC informed EPA that the Facility did not apply for coverage under the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-08-001). Therefore, the Respondent failed to apply for and obtain permit coverage for stormwater discharges from construction activity, in violation of Section X.M of the CAFO General Permit.

4. Section VI.A of the CAFO General Permit prohibits the discharge of process wastewater pollutants to the surface waters of the State except in accordance with Section VI.C of this permit (containment requirements). During the inspection, EPA and NYSDEC inspectors observed a discharge of process wastewater pollutants from the bunk silo to a wetland that drains to the Nanticoke Creek, which is both a surface water of New York State and a water of the United States. Therefore, an unpermitted discharge was observed from the Respondent's bunk silo, in violation of Section VI.A of the CAFO General Permit.
5. Section VIII.C.viii of the NYSDEC CAFO General Permit requires the permittee to remove solids, sludges, manure, or other pollutants in the course of treatment or control of wastewaters in a manner such as to prevent pollutants from being discharged to waters of the State. The Facility was required to install a 2 feet high berm below the unloading pad at Lagoon #2 large enough to contain 5,000 gallons of manure to prevent a spill during unloading. During the inspection, EPA inspectors observed that the berm had not been constructed. Therefore, the Respondent failed to remove manure in a manner such as to prevent pollutants from being discharged to waters of the State.
6. Section X.G of the NYSDEC CAFO General Permit requires the permittee to at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the permit. During the inspection, EPA inspectors observed trees growing in the north corner and northwest wall of Lagoon #2 which may negatively impact the integrity of the storage. Therefore, the Respondent failed to properly operate and maintain all facilities and systems of treatment and control to achieve compliance with the permit.
7. Section IX.F of the NYSDEC CAFO General Permit requires the Respondent to retain copies of all records and reports required by this permit for a period of at least five (5) years from the date reported. Specifically, Section IX.K requires all precipitation events in excess of 0.3 inch shall be measured and recorded in the CNMP. During the inspection, EPA inspectors observed that rainfall records were only available for January 2008 through the present day. The Facility has been permitted since December 1999, and therefore Respondent should have been keeping records for the last five years (2005-2010). Therefore, the Respondent failed to retain copies of all records and reports required by this permit for a period of at least 5 years from the date reported, in violation of Section IX.F of the CAFO General Permit.

#### **D. Ordered Provisions**

Based on the Findings of Violation set forth above, and pursuant to Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the following actions:

1. Respondent shall immediately cease discharging silage leachate to the Nanticoke Creek.
2. Respondent shall immediately, and no later than twenty (20) days of receipt of this Order, exclude clean water from concentrated waste areas to the fullest extent practical. Within fourteen (14) days of implementation, Respondent shall provide a Notification of Completion to EPA. The notification shall be in writing and shall detail what steps were taken, and where, throughout the Facility.
3. Respondent shall immediately stabilize the disturbed soil at the New Barn site at the Main Farm on Caldwell Hill Road, in accordance with the New York State SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-08-001).
4. Respondent shall immediately, and no later than twenty (20) days of receipt of this Order, install a two feet berm below the unloading pad at Lagoon #2 large enough to contain 5,000 gallons of manure to prevent a spill during unloading. Within fourteen (14) days of implementation, Respondent shall provide a Notification of Completion to EPA.
5. Respondent shall immediately, and no later than twenty (20) days of receipt of this Order, remove trees growing on the north corner and northwest wall of Lagoon #2 be removed, and vegetation maintained, to preserve the integrity of the lagoon. Within fourteen (14) days of implementation, Respondent shall provide a Notification of Completion to EPA.
6. By December 31, 2010, Respondent shall have the Facility's silage leachate control system design and operation, including the low flow collection system and high flow grass treatment strip, evaluated and designed by a New York State licensed professional engineer, in accordance with all applicable NRCS standards, including NRCS Standards NY312 (Waste Management System) & NY635 (Vegetated Treatment Area) and have the engineer prepare an evaluation report summarizing his/her findings, in addition to a site design. Within fourteen (14) days of receipt of the evaluation report from the engineer, Respondent shall provide a written Notification of Completion to EPA, accompanied by a copy of the evaluation report and site design.
7. By September 30, 2011, Respondent shall fully implement all high risk practices identified in the CNMP, including, but not limited to, silage leachate control and barnyard runoff management. Respondent shall ensure that the silage leachate control system is constructed and implemented in accordance with all applicable NRCS standards. Within fourteen (14) days of implementation, Respondent shall provide a Notification of Completion to EPA. The notification shall be in writing and include a certification by the Respondent and the Respondent's CNMP Planner that all high risk practices identified in the CNMP, including, but not limited to, silage leachate control, are fully implemented and operational.

8. Respondent shall maintain all records required by the permit, including those identified in Section VII.C.vi of the CAFO General Permit, in accordance with Section IX.F of the Permit.

#### **E. General Provisions**

1. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state and/or federal permits.
2. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude the EPA from initiating an administrative or judicial enforcement action to recover, penalties for any violations of the CWA, or to seek additional injunctive relief pursuant to Section 309 of the CWA, 33 U.S.C. §1319.
3. Nothing in this Order shall limit the EPA's right to obtain access to, and/or inspect Respondent's Facility, and/or request additional information from Respondent, pursuant to Section 308 of the CWA, 33 U.S.C. §1318.
4. The EPA may subsequently amend this Order in accordance with the CWA. For example, the EPA may amend this Order to address any non-compliance with the CWA, including but not limited to any non-compliance with the requirements of Section 402 of the CWA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment will remain in full force and effect.
5. If any provision or authority of this Order or the application of this Order to Respondent is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.
6. All submissions to the EPA required by this Order shall be sent to:

Christy Arvizu  
Water Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, NY 10007

7. Any written report sent to EPA in accordance with this Order will include the following statement:

I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons gathering the information, I certify that the information



submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.

8. Pursuant to 40 C.F.R. §§2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment and which is not effluent data. For any such claim, describe the basis for the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, "Confidential Business Information." Failure to assert a claim in the manner described in 40 C.F.R. §2.203(b) allows the EPA to release the submitted information to the public without further notice. The EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited regulations. Special rules governing information obtained under the Clean Water Act appear in 40 C.F.R. §2.302.
9. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondent to a civil action in federal district court, pursuant to Section 309(b) of the Act, 33 U.S.C. §1319(b), for (1) civil penalties up to \$37,500 per day for each violation, and/or (2) other injunctive relief.
10. The terms of this Order shall be effective and enforceable against Respondent upon its receipt of the Order.

11/25/2010  
Date

Dore LaPosta  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF:**

Scott Glezen  
Glezen Farms, LLC  
Lisle, NY 13797

NYA000237

Respondent

Proceeding pursuant to §309(a) of the Clean Water  
Act, 33 U.S.C. §1319(a)

**ADMINISTRATIVE ORDER**

**CWA-02-2011-3004**

**ACKNOWLEDGMENT OF RECEIPT OF  
ADMINISTRATIVE COMPLIANCE ORDER**

I, \_\_\_\_\_, an officer of Glezen Farms, LLC  
with the title of, \_\_\_\_\_, do hereby acknowledge the receipt of copy of the  
ADMINISTRATIVE ORDER, CWA-02-2011-3004.

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_